



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/712,490

11/13/2003

Anne Dussaud

J6866(C)

8338

201 7590 06/14/2010
UNILEVER PATENT GROUP
800 SYLVAN AVENUE
AG West S. Wing
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT

PAPER NUMBER

3736

NOTIFICATION DATE

DELIVERY MODE

06/14/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/712,490
Filing Date: November 13, 2003
Appellant(s): DUSSAUD ET AL.

Edward A. Squillante, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/19/2010 appealing from the Office action mailed 07/08/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-11 and 17-20 are pending and rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

NEW GROUND(S) OF REJECTION

Claims 1-11 and 17-20 are newly rejected hereinbelow under 35 U.S.C. § 112 1st paragraph.

Claims 1-11 and 17-20 are newly rejected hereinbelow under 35 U.S.C. § 112 2nd paragraph.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The rejection of claims 1-11 and 17-20 under 35 U.S.C. § 101 is/are *withdrawn*.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

Flament, F., et al. "*Finger perception metrology. Correlation between friction force and acoustic emission*," Abstracts, Abstract #19 of a presentation at a skin conference in Hamburg, 2003, pages 168-169, and filed as NPL on 11/13/2003 with IDS submitted 11/13/2003.

Fleming, M. "*Mobile, multimedia computing for improved clinicopathologic correlation in dermatopathology*," Abstracts, Abstract #23 of a presentation at a skin conference in Hamburg, 2003, pages 170-171, and filed as NPL on 11/13/2003 with IDS submitted 11/13/2003.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

1. Claims 1, 3-6, 8-11, and 17-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Flament, F., et al. "*Finger perception metrology. Correlation between*

Art Unit: 3736

friction force and acoustic emission," Abstracts, Abstract #19 of a presentation at a skin conference in Hamburg, 2003, pages 168-169, filed as NPL on 11/13/2003 with IDS submitted 11/13/2003, hereinafter Flament.

2. For claims 1, 3-6, 8-11, and 17-20, Flament discloses a cosmetic product selection and/or customization system (Flament, pages 168-169, especially "the device" in the conclusion section) comprising, *inter alia*, a tactile acoustic emission measurement and analysis system (Flament, pages 168-169, especially "the device" in the conclusion section), comprising *inter alia*:

- means of generating an acoustic emission signal (Flament, pages 168-169, especially "the finger" in the conclusion section) from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces by sliding or rubbing (Flament et al, pages 168-169, especially "the natural gesture of touch" in the conclusion section) without motorized support (Flament, pages 168-169, especially "the finger" in the conclusion section);
- means for collecting, storing, and displaying said emission signal (Flament, pages 168-169, especially "the device" in the conclusion section);
- means for correlating said emission signal with an attribute of said skin (Flament, pages 168-169, especially "the device" in the conclusion section) comprising a means for evaluating current appearance of skin attributes (Flament, pages 168-169, especially "the device" in the conclusion section); and

Art Unit: 3736

- at least one cosmetic composition for reducing the appearance of at least one undesirable skin attribute (Flament, pages 168-169, especially "the cosmetic formulation" in the conclusion section);
- wherein said system is used as a clinical evaluation tool of skin attributes (Flament, pages 168-169, especially "the study" in the conclusion section) and is not only suitable but configured to be used by consumers or clinicians (Flament, pages 168-169, especially "the clinicians" in the conclusion section) to study/evaluate the impact and the effect of the application cosmetic compositions that affect skin attributes, including: hydration, texture, roughness, porosity, wrinkles, and pathologies of cutaneous tissue (Flament, pages 168-169, especially the evaluation of skin adhesion and hydration and the evaluation of cutaneous tissue pathologies including psoriasis, eczema, dry skin etc... in the conclusion section) including before and after cosmetic formulation application,
- wherein said system comprises a medium for indicia of at least said two said skin attributes that allows said clinician to distinguish the effect of said application of cosmetic composition (Flament et al, pages 168-169, especially "The device can be used to study the impact of cosmetic formulation on the skin" in the conclusion section),
- wherein the system is suitable to be placed alongside a container holding said cosmetic composition and facilitating cosmetic composition selection based on the determined skin attributes (Flament et al, pages 168-169, especially allowing the

Art Unit: 3736

clinicians and cosmetic industry to study the impact of cosmetic formulation on the skin in the conclusion section), and

- wherein said system is used in air (Flament et al, pages 168-169, especially the conclusion section).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

Art Unit: 3736

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flament, F., et al. "*Finger perception metrology. Correlation between friction force and acoustic emission*," Abstracts, Abstract #19 of a presentation at a skin conference in Hamburg, 2003, pages 168-169, filed as NPL on 11/13/2003 with IDS submitted 11/13/2003, hereinafter Flament in view of Fleming, M. "*Mobile, multimedia computing for improved clinicopathologic correlation in dermatopatholgy*," Abstracts, Abstract #23 of a presentation at a skin conference in Hamburg, 2003, pages 170-171, and filed as NPL on 11/13/2003 with IDS submitted 11/13/2003.

4. For claims 2 and 7, Flament discloses the claimed invention, as set forth and cited above, except for expressly disclosing the means for digitally displaying test result signals via the internet and/or handheld software as medium. Although Flament appears silent with respect to displaying the results using the internet and/or handheld software, Flament is expressly concerned with providing clinicians and the cosmetic industry a device that may be used to evaluate a patient and/or consumers skin condition and evaluate the impact of the application of cosmetic formulations thereto. Moreover it is well known in the art, that medical diagnosis may be presented by employing commonly known displaying techniques including for example at least the internet and/or handheld software.

5. For claims 2 and 7, Fleming teaches a system for communicating dermalogical information from a pathology diagnosis environment to a client (Fleming, pages 170-

Art Unit: 3736

171) comprising, *inter alia*: a means for digitally displaying test result signals via the internet and/or handheld software (Fleming, pages 170-171).

6. Thus for claims 2 and 7, all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. All of the component parts are known in Flament and Fleming. The only difference is the combination of the component parts into a single device. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the components as taught by Flament with the components as taught by Fleming to achieve the predictable results of increasing the ease of use a dermatological diagnostic system and improving the communication of diagnosis thereof by providing an alternate means to display diagnostic data by utilizing well known displaying techniques.

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 112 1st Paragraph

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1-11 and 17-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably

Art Unit: 3736

convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

8. Independent claims 1 and 5 positively recite "without motorized support" in lines 10 and 12, respectively. "Without motorized support" comprises new matter. The claims were amended to include "without motorized support" in an apparent attempt to obviate the Flament reference (Flament, F., et al. *"Finger perception metrology. Correlation between friction force and acoustic emission,"* Abstracts, Abstract #19 of a presentation at a skin conference in Hamburg, 2003, pages 168-169, and filed as NPL on 11/13/2003 with IDS submitted 11/13/2003.). However, the written description of the invention in no way contemplates either the inclusion and/or exclusion of "motorized support" in the acoustic emission measurement system as disclosed. Conversely the disclosure appears to merely describe a probe comprised of various sensors that is/are placed near the skin/skin contact area where the acoustic emission signals are to be recorded (see at least Specification page 10). The written description does not describe nor suggest either "a support" or any "motorization" of the probe or sensors therein, let alone "without motorized support" as claimed. The claim limitation "without motorized support" was not described in the specification at filing and one skilled in the art would not recognize the specification provides support or enablement for "without motorized support". "Without motorized support" is new matter.

Claim Rejections - 35 USC § 112 2nd Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3736

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-11 and 17-20 are rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim(s) recites/recite the following means plus function limitations: “means for generating an acoustic emission signal”, “means for collecting, storing and displaying said emission signal”, “means for correlating said emission signal”, “means for evaluating”, and “a means for displaying”.

10. This limitation invokes 35 USC § 112, ¶ 6 because it meets the 3-prong analysis set forth in MPEP 2181 as it recites the phrase “means for” or “step for” (or appellant identifies the limitation as a means (or step) plus function limitation in the appeal brief) and the phrase is modified by functional language and it is not modified by sufficient structure, material, or acts for performing the recited function. Also see *Altiris Inc. v. Semantec Corp.*, 318 F.3d 1363, 1375 (Fed. Cir. 2003). 35 USC § 112, ¶ 6, requires such claim language to be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. *“If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section § 112.”* In *re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ 1845, 1850 (Fed. Cir. 1994)(in banc.). For a computer-implemented means-plus-function claim limitation that invokes 35 USC § 112, ¶ 6, the corresponding structure is required to be more than simply a general

Art Unit: 3736

purpose computer. *Aristocrat Technologies, Inc. v. International Game Technology*, 521 F.3d 1328, 1333, 86 USPQ2d 1235, 1239-40 (Fed. Cir. 2008). The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer. *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ2d 1385 (Fed. Cir. 1999). **The written description must at least disclose the algorithm that transforms the general purpose microprocessor to a special purpose computer programmed to perform the claimed function.**

Aristocrat, 521 F.3d at 1338, 86 USPQ2d at 1242.

11. In the instant application, the following portions of the specification and drawings may appear to describe the corresponding structure for performing the claimed function:

- a) “means for generating an acoustic emission signal” may be one area of a body rubbing or sliding against another area of a body to produce skin/skin frictional forces (Specification pages 7-11) or may be the measurement of the acoustic waves using one of the various sensors (20, 22, or 24) (Figure 1) (Specification pages 7-11) to generate a signal reflecting the skin/skin contact properties and the in-use conditions (Specification pages 7-11) or may be the generation of the acoustic emission signal by manipulation in the result storage, manipulation and output system (18) (Figure 1) (Specification pages 7-11);
- b) “means for collecting, storing and displaying said emission signal” may be the combination of probe (12) (Figure 1) (Specification pages 7-11) with sensors (20, 22, or 24) (Figure 1) (Specification pages 7-11), signal conditioning and amplifying system (14) (Figure 1) (Specification pages 7-11), data acquisition system (16)

(Figure 1) (Specification pages 7-11), and result storage, manipulation and output system (18) (Figure 1) (Specification pages 7-11);

c) "means for correlating said emission signal" may be result storage, manipulation and output system (18) (Figure 1) (Specification pages 7-11);

d) "means for evaluating" may be result storage, manipulation and output system (18) (Figure 1) (Specification pages 7-11); and

e) "a means for displaying" may be result storage, manipulation and output system (18) (Figure 1) (Specification pages 7-11).

12. However, the specification and drawings do not disclose sufficient corresponding structure, material or acts for performing the claimed function for the following reasons:

13. With respect to (a), it appears that a signal and particularly an acoustic emission signal is generated. The generation of the signal could be considered to occur from one or more of the various structures listed above. However, it is indeterminate what structure(s) is/are correspond to a "means for generating an acoustic emission signal". The specification while apparently being enabling for the function does not adequately describe and/or associate sufficient structure for performing the functions as claimed and the specification does not provide an adequate disclosure showing what is meant by the language.

14. With respect to (b) and (e), it appears that the emission signal is collected, stored, and displayed. However, it is indeterminate what structure(s) is/are correspond to the collecting, storing, or displaying. The specification does not appear to show one or more structure(s) for "collecting, storing, and displaying", nor does the specification

Art Unit: 3736

appear to expressly disclose any “display” at all, let alone one for an emission signal. It is indeterminate what structure(s) is/are correspond to a “means for collecting, storing and displaying said emission signal”. The specification while apparently being enabling for the functions does not adequately describe and/or associate sufficient structure for performing the functions as claimed and the specification does not provide an adequate disclosure showing what is meant by the language.

15. With respect to (c), it appears the emission signal is correlated with a skin attribute by software in the result storage, manipulation, and output system which is a general purpose computer as disclosed (see Specification page 9). However, the specification does not describe how the emission signal is correlated. Specifically, the specification does not provide any algorithm or even software for the claimed means for correlating said emission signal beyond that of a general purpose computer. Similarly no structure is disclosed for a special purpose computer for correlation or a computer programmed to correlate, conversely only that the correlation merely occurs. Appellants have failed to adequately describe sufficient structure for performing the functions claimed. The specification while apparently being enabling for the functions does not adequately describe and/or associate sufficient structure for performing the functions as claimed and the specification does not provide an adequate disclosure showing what is meant by the language.

16. With respect to (d), it appears the emission signal is evaluated to determinate a skin attribute by software in the result storage, manipulation, and output system which is a general purpose computer as disclosed (see Specification page 9). However, the

Art Unit: 3736

specification does not describe how the emission signal is evaluated. Specifically, the specification does not provide any algorithm or even software for the claimed means for evaluating said emission signal beyond that of a general purpose computer. Similarly no structure is disclosed for a special purpose computer for evaluation or a computer programmed to evaluate, conversely only that the evaluation merely occurs. Appellants have failed to adequately describe sufficient structure for performing the functions claimed. The specification while apparently being enabling for the functions does not adequately describe and/or associate sufficient structure for performing the functions as claimed and the specification does not provide an adequate disclosure showing what is meant by the language.

(10) Response to Argument

17. Appellant's arguments filed 03/19/2010 have been fully considered but they are not persuasive.

18. Appellant argues the anticipatory rejection of the claims under Flament and the obviousness rejection of the claims under Flament in view of Fleming, specifically Appellant argues the rejection of claims 1 and 5 as being anticipated by Flament.

19. With respect to claims 1 and 5, Appellant argues Flament does not disclose, teach, and/or suggest the claimed invention because of the following:

- "the present system is superior in that an acoustic emission signal from the body is generated by contacting skin-on-skin. Direct application of a probe or device onto the body is not required and this is what makes the present invention superior.

Art Unit: 3736

Abrasive papers and motorized support are not required.” (page 11 filed 03/19/2010); and

- “In contrast, and as already made of record, the abstract relied on by the Examiner is merely directed to finger perception metrology whereby finger sliding tests are performed on various abrasive papers to show a good correlation of the co-efficient of friction: and the variations of acoustic signals (please see Sec, 19, pages 168-169 of the abstract). The process set forth in the abstract works where the hand “.... remains united of a motorized support describing with: a constant speed of 10 mm S-1 a journey of length 15 mm.” Again, a prototype of perception metrology, therefore, is described to quantify the friction and acoustic signals during the sliding of the finger on a surface of materials. The teachings of the abstract clearly teach away from the presently claimed invention which creates emission signals from a body by contacting skin-on-skin (please see the limitations of the independent claims). Direct application of a device onto the body is not required in the current invention but is required in the technology described in the reference.” (page 12 filed 03/19/2010).

20. The Examiner disagrees and notes the following in response:

21. Initially, it appears Appellant is solely arguing Flament does not disclose “means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces by sliding or rubbing without motorized support” as claimed. Reiterating, it is the Examiner’s position that Flament discloses a means for generating an acoustic

Art Unit: 3736

emission signal (Flament, pages 168-169, especially "the finger" in the conclusion section) from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces by sliding or rubbing (Flament et al, pages 168-169, especially "the natural gesture of touch" in the conclusion section) without motorized support.

22. The Examiner does not dispute that Flament discloses and teaches "a prototype" of perception metrology for measuring and quantifying the friction and acoustic signals resulting from the sliding of a material on a finger (Flament et al, pages 168-169, especially introduction and results). The prototype uses a motorized support for the hand and the measurements are conducted on a variety of different surfaces to investigate the utility of the prototype to assess tactile perception and for example at least finger hydration.

23. Although Flament discloses the structure and the function of "the prototype", Flament specifically, distinctly, and additionally discloses "the measures made with the finger, provided with an acoustic sensor on the skin, allow to the clinicians and to the cosmetic industry to estimate the sensory properties while making a natural gesture of touch. The device can be used to study the impact of a cosmetic formulation on the skin by evaluating the variations of sweetness, adhesion but especially effect of hydration as well as pathologies of the cutaneous tissue (psoriasis, eczema, dry skins...)" (Flament et al, pages 168-169, conclusion).

24. Flament expressly discloses "the device" (separate and distinct from "the prototype") is to be used for the cosmetic studies by clinicians naturally touching the

Art Unit: 3736

skin of a patient and/or consumer. Flament's device includes acoustic sensors on the skin, which must either be the clinician's finger skin or the patient's skin area of interest.

Flament's device uses the clinician's finger to generate an acoustic emission signal by touching the patient, which comprises "generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces by sliding or rubbing without motorized support", and then the sensor measures the emitted signal.

25. Moreover under the broadest reasonable interpretation of the claim limitations, consistent with the instant specification, using an interpretation under 35 U.S.C. 112 6th paragraph, and although not apparently argued by Appellant, Flament not only expressly discloses the claimed invention, but *Flament discloses at least a structural equivalent that performs at least the same function* ("generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces by sliding or rubbing without motorized support").

26. Furthermore and with respect to portions of claims 1 and 5 which Appellant does not appear to specially argue, the Examiner notes under the broadest reasonable interpretation of the claim limitations, consistent with the instant specification and using an interpretation under 35 U.S.C. 112 6th paragraph, "the device" of Flament must inherently include at least the structural equivalents of "means for collecting, storing, and displaying" and the "means for correlating", if not the identical structure, because in order for "the device" to function as stated and cited above in the conclusion it must

Art Unit: 3736

include at least a general computer or similar digital data storage medium, as one of ordinary skill in the art of medical diagnostics would be appraised.

27. With respect to the anticipatory rejections of claims 3, 4, 6, 8-11, and 17-20, Appellant does not appear to substantively argue the merits of the anticipatory rejections. Conversely, Appellant appears to reiterate the arguments directed towards the anticipatory rejections of claims 1 and 5. The Examiner notes it appears the rejections of claims 3, 4, 6, 8-11, and 17-20 stand or fall with the anticipatory rejections of claims 1 and 5.

28. With respect to the obviousness rejections of claims 2 and 7, Appellant does not appear to substantively argue the combination of references. Conversely, Appellant appears to reiterate the arguments directed towards the anticipatory rejection. The Examiner notes it appears the rejections of claims 2 and 7 stand or fall with the anticipatory rejections of claims 1 and 5.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer

Art Unit: 3736

exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

Jeffrey G. Hoekstra

/Jeffrey G. Hoekstra/

Art Unit: 3736

Examiner, Art Unit 3736

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/DONALD T HAJEC/

Director, Technology Center 3700

Conferees:

/Max Hindenburg/

Supervisory Patent Examiner, Art Unit 3736

/Tom Hughes/

TQAS, TC 3700